IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.360 OF 2006

M/s.Impex International & others. ... Petitioners

vs.

The Bombay Mercantile Co.op.Bank Ltd. & others. ... Respondents

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Ms.Shah i/b. Lilani Shah & Co., for Petitioners.

Mr.T.N.Tripathi, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 9th October,2006

P.C.:-

1. The petition is heard finally by consent of parties. Admittedly, the Award challenged in the petition is an ex-parte award in the sense that the petitioners appeared before the learned Arbitrator on one date i.e. on 31.10.2005 but did not appear thereafter and the Award came to be made. The grievance of the petitioners is that at no point of time the statement of claim was served on the petitioners and the Award has been made even without

serving statement of claim on the petitioners In paragraph 9(d) of the petition, there is clearcut statement made that no statement of claim was ever served on the petitioners and that the documents on the basis of which the claim was made by the bank were also not supplied to the petitioners. Perusal of reply filed on behalf of the bank shows that though the statement made in paragraph 9(d) that the statement of claim was not served on the petitioners is denied, it is nowhere stated as to on what date the statement of claim was served on either the petitioners or on the representative of the petitioners. Even the order sheet on which the reliance is placed by the petitioner of the date 31.10.2005 does not show that on that date the statement of claim was served on the petitioners. It was argued before me that the petitioners had admitted that the petitioners were asked by the learned Arbitrator to file reply to the statement of claim. The learned Counsel appearing for Bank respondent is not able to point out to me any such admission by the petitioner. Thus, it appears that the learned Arbitrator has made the Award without serving copy of the statement of claim on the petitioners. Obviously therefore, the Award made is invalid and therefore, the Award is liable to be set aside. Petition succeeds and is allowed. The Award impugned in the petition is set aside. Petition is disposed of. No order as to costs.